

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CE2679
	)	HUD NO.: N/A
<b>FAMILIA FRESH FOODS</b>	)	EEOC NO.: N/A
	)	ALS NO.: 09-0556
Petitioner.	)	
	)	

**ORDER**

This matter coming before the Commission by a panel of two, Commissioners Munir Muhammad and Nabi Fakroddin presiding, upon Familia Fresh Foods' ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CE2679; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Default is **VACATED** and the cause shall be **REMANDED** on the following ground:

**GOOD CAUSE SHOWN**

In support of its determination the Commission states the following findings of fact and reasons:

1. On August 14, 2008, Tisha Dismuke ("Complainant") filed a charge of discrimination with the Respondent alleging violations of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On September 2, 2009, the Respondent issued a Notice of Default against the Petitioner for its failure to file a verified response to the charge. On October 7, 2009, the Petitioner timely filed its Request.
2. The undisputed facts in the investigation file show that the Respondent mailed a Notice of Charge to the Petitioner. The Petitioner was notified it was required to file a verified response within sixty days of receipt of the charge. Failure to file a response within sixty days could lead to an issuance of a Notice of Default. In this case, the verified response was due by May 15, 2009.
3. The Petitioner did not file a verified response because it was in the process of reaching a settlement with the Complainant. The Petitioner did settle the matter with the Complainant. The

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

Petitioner informed the Respondent's investigator of the settlement agreement with the Complainant.

4. On June 24, 2009, the Respondent provided the Petitioner's attorney with a Voluntary Withdrawal Request form to be signed by the Complainant. The Respondent never received a signed and dated withdrawal form from either the Complainant or the Respondent.
5. On July 24, 2009, the Respondent mailed a Notice to Show Cause to the Petitioner. The Petitioner was given fifteen days from receipt of the Notice by which to file a verified response to the charge. The Petitioner did not file a verified response to the charge because it had settled the matter with the Complainant.
6. On September 2, 2009, the Respondent mailed the Petitioner a Notice of Default for Petitioner's failure to file a verified response and for its failure to show good cause for its failure to do so.
7. In its Request, the Petitioner argues that it reached a settlement with the Complainant prior to the date the verified response was due. Further, the Petitioner states it relied on the verbal assurance of the Respondent's investigator that the Petitioner would not have to file a verified response because the Petitioner was settling the matter with the Complainant. The Petitioner attached to its Request a copy of the signed settlement agreement between itself and the Complainant, a Voluntary Withdrawal Form signed by the Complainant, and signed checks cashed by the Complainant, demonstrating that the Complainant had accepted the terms and conditions of the settlement agreement.
8. In its Response, the Respondent asks the Commission to sustain its Notice of Default for failure to file a verified response. The Respondent argues the Petitioner had a statutory obligation to file a verified response. The Respondent contends it was never properly served with notice of the settlement agreement. The Respondent states that even if its investigator had been aware of the settlement, this fact did not absolve the Petitioner of its statutory obligation to file a verified response to the charge.

## **CONCLUSION**

The Commission's review of the Respondent's investigation file and the Petitioner's Request, leads it to conclude that the Petitioner has shown good cause for not filing a verified response to the charge.

The Petitioner has established that the parties in this matter have come to a settlement. The Petitioner has provided evidence that the Complainant has accepted the terms and conditions of the settlement agreement. To bring this matter before the Commission's Administrative Law Section for a hearing on damages would be futile since the matter has been settled and the Complainant has even cashed at least one of the settlement checks. Further, it appears the Petitioner's failure to file the verified response was not a willful act in defiance of the Act, but rather was the result of misinformation provided to it by the Respondent's personnel.

Accordingly, it is the Commission's decision that the Petitioner has shown good cause for not filing a verified response to the charge. The Respondent's Notice of Default is vacated.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The Notice of Default is **VACATED** and the matter is hereby **REMANDED** to the Illinois Department of Human Rights so that this matter may be administratively closed.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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Entered this 14<sup>th</sup> day of April 2010.

Commissioner Munir Muhammad

Commissioner Nabi Fakroddin